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June 9, 2005

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: Bay State Gas Company, D.T.E. 05-27

Dear Ms. Cottrell:

Enclosed is the Opposition of Bay State Gas Company to the Attorney General's Motion for Depositions.

Very truly yours,

Robert L. Dewees, Jr.

RLD/tlm
Enclosure

cc: Caroline M. Bulger, Hearing Officer (1 copy)
John Sullivan, DTE (7 copies)
Andreas Thanos, Assistant Director, Gas Division (1 copy)
Alexander J. Cochis, Assistant Attorney General (4 copies)
Service List

**THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Petition of Bay State Gas Company)
For Approval of Revised Tariffs)
And Other Rate Modifications)

D.T.E. 05-27

**OPPOSITION OF BAY STATE GAS COMPANY
TO THE ATTORNEY GENERAL'S MOTION
FOR DEPOSITIONS**

On June 2, 2005 the Attorney General filed a Motion to conduct depositions of an unknown number of unidentified Bay State Gas Company ("Bay State") call center managers, an unknown number of unidentified Bay State pipe repair and replacement managers and an unknown number of unidentified third party corrosion consultants to Bay State. The Motion also requests the deposition of a consultant who prepared a report for Bay State on corrosion leak data. The Motion further requests depositions of unidentified "others as ongoing efforts identify them."

Bay State opposes the Attorney General's request for depositions, because the taking of depositions in this proceeding, which is conducted under a six-month statutory rate suspension deadline, would unduly complicate and burden the conduct of the proceeding without any corresponding benefit. It would also increase the time required for witness testimony and thereby increase rate case expenses for all parties. Furthermore, the Attorney General has failed to demonstrate any compelling need for depositions in this proceeding, and his request is so broad and unspecific that, if granted, would likely result in a completely

open-ended and unmanageable procedural schedule. The Department's standard rate case ground rules and discovery procedures are far better suited to the requirements of the investigation that must be conducted by the Department in this proceeding than the procedure suggested by the Attorney General involving the taking of numerous depositions. The discovery practice that utilizes depositions in civil litigation under the Massachusetts Rules of Civil Procedure conflicts with the Department's need for administrative efficiency within a six-month statutory deadline.

The Department's procedural rules permit the taking of depositions if there is agreement by all parties to do so or by order of the presiding officer. 220 CMR 1.06(6)(c)6.a. However, depositions are permitted only if "the taking of a deposition will be more efficient than other available discovery methods, and will not unduly burden the affected parties." 220 CMR 1.06(6)(c)6.b. It has been the Department's practice to permit depositions in its proceedings only rarely, and no depositions have been taken in recent rate cases before the Department.

Although the Attorney General states that depositions will "create a more...efficient record," he provides no support for this statement and the opposite is the case. The taking of depositions in this proceeding would be substantially more inefficient than standard Department discovery practice and would unduly burden all parties and the Department with duplicate procedures.

The Attorney General requests depositions of an unknown number of Bay State call center managers, pipe repair and replacement managers and "third party corrosion consultants" whose identity he cannot specify. He also requests additional depositions of

“others as ongoing efforts identify them.” The Department’s rules require that a motion for deposition include the name and title of the person to be deposed. 220 CMR 1.06(6)(c) 6.b. The failure to identify the names and titles of the persons to be deposed and the unlimited number of depositions requested, alone, are sufficient grounds to deny the Motion.

The Attorney General requests a deposition of one individual who is employed by a consulting firm that prepared a report for Bay State which was submitted in a response to an Attorney General information request. Bay State does not rely on this report as part of its direct case in this proceeding and did not include it in its initial filing with the Department. Bay State regularly engages various types of consulting and other outside firms to assist it with different aspects of its business. Often, reports from such firms are provided to the Department and the parties to rate case proceedings in response to information requests. Permitting the taking of depositions of employees of such firms that are not relied upon by the petitioning company would quickly overburden rate case proceedings such as this one.

The Department has developed discovery procedures and ground rules over many years that have enabled it to conduct rate case proceedings as efficiently as possible within the six-month deadline for these cases. In contrast, depositions are used by parties in civil litigation in the Courts of the Commonwealth under discovery rules that are significantly different from the rules applicable to rate case proceedings before the Department. Under the Massachusetts Civil Rules of Procedure, there is a limit of 30 written interrogatories, and although there are case tracking schedules, there is no date certain by which a case must be concluded. Depositions are the primary source of discovery, are generally unlimited in

number and can be taken over an extended period of time. See generally, Mass. R. Civ. P. Rules 26 and 30.

However, the Department's rules and procedures followed in rate cases eliminate the need for depositions. A rate case begins with the filing of extensive prepared testimony and supporting schedules and documentation. Parties are permitted an almost unlimited opportunity to submit written discovery with the opportunity for follow up written discovery. Parties also have the opportunity to conduct extensive cross-examination of witnesses and to pose, and receive responses to, oral record requests during evidentiary hearings. This procedure is well suited to rate case investigations, where much of the record developed by the Department and the parties consists of financial, accounting and economic data. These discovery procedures serve the purpose that is provided by depositions in civil litigation. The Attorney General has failed to show that the Department's traditional discovery procedures are not adequate in the circumstances of this proceeding. In fact, to date the Attorney General has submitted fifteen sets of information requests. Finally, the six-month statutory deadline within which rate cases must be conducted makes the taking of depositions, in addition to the public and evidentiary hearings which must be held by the Department and the time required to respond to voluminous information requests, unfeasible.

There are a number of procedural issues associated with the taking of depositions that make them unsuited to this rate case proceeding. Any party can attend and examine the witness in a deposition, and given the large number of parties in this case, the taking of depositions could add many hours and even days of testimony to an already tight hearing schedule. Mass. R. Civ. P. Rule 30(c). In a deposition, objections may be made but are

generally not argued until trial. See generally, Id. Since there is no presiding officer in a deposition to rule on issues such as relevance and repetitiveness of questioning, there is no practical way to limit irrelevant, repetitious or otherwise objectionable testimony, and deposition testimony could extend far longer than otherwise would be permitted if the testimony were presented before a Department hearing officer.

There would also likely be time consuming procedural issues presented to the Department as a result of offers to introduce all, or portions of, deposition testimony into the record, including objections and comments on the proposed use of such deposition testimony and whether the deponent would be required to appear as a witness in the hearings held by the Department. The possibility that a witness would be deposed and then be required to appear as a witness at the evidentiary hearings would result in duplicative testimony. Given the investigatory nature of rate case proceedings, and the duty of the Department to develop a complete and accurate record within the compressed time within which rate cases are conducted, it is important that the Department be present at all testimony given, so that, at a minimum, it can ask clarifying questions and to ensure that the record is accurate and complete.

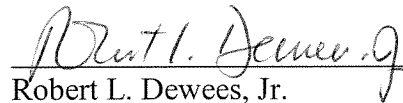
The Department has permitted depositions in certain situations, but it would appear those have been limited cases where the proceeding involved was not governed by a six-month statutory deadline. New England Telephone and Telegraph Company, Investigation by the Department into the Propriety of the Cost Studies filed in April, 1986. D.P.U. 86-33-L (August 23, 1989) (order issued almost one year after revised cost study was filed).

For the reasons stated above, the taking of depositions in this proceeding would be inefficient, duplicative of the scheduled evidentiary hearings, would drive up the rate case expenses for all participants and would overburden an already compressed schedule. Given the extensive written and oral discovery that is permitted under the Department's rules, the Attorney General has not demonstrated a compelling need for depositions. Finally, the Attorney General's Motion is vague and overbroad and fails to specify the identity or number of persons he would depose. The Attorney General's Motion should be denied.

Respectfully submitted,

BAY STATE GAS COMPANY

By its attorneys,



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Dated: June 9, 2005

CERTIFICATION

I certify that I served today a copy of the attached Opposition of Bay State Gas Company to the Attorney General's Motion for Depositions by hand delivery, first class mail postage prepaid or electronically on the Department of Telecommunication and Energy and all parties on the service list on file with the Secretary of the Department of Telecommunication and Energy for this proceeding.

Dated at Boston, Massachusetts this 9th day of June, 2005


Robert L. Dewees, Jr.